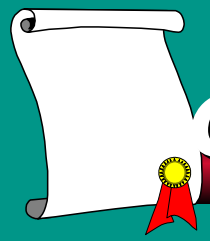
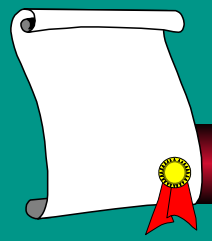


CONTRACT TYPES - PAYMENT, FINANCING AND FUNDING

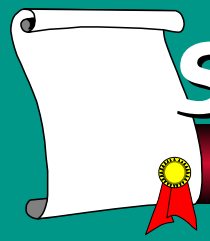
- **Policy Objectives**
  - **reasonable contractor risk**
  - **incentive for efficient performance**



DETERMINATION OF CONTRACT TYPE

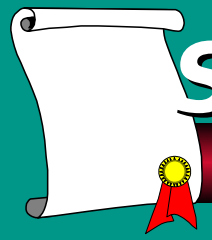
- [T]he determination of the type of contract the parties entered into is a question of law and is not controlled by labels or contract provision.... [One] must look beyond the first page of the contract to determine the legal rights for which the parties bargained, and only then characterize the contract.

- Court of Federal Claims, Crown Laundry & Dry Cleaners, Inc. v. U.S. 29 Fed. Cl. 506 (1993)



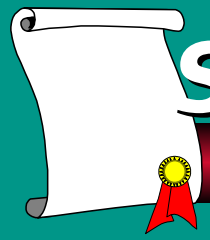
SELECTION OF CONTRACT TYPE

- **FACTORS FOR CONSIDERATION**
  - Whether price competition is available
  - The accuracy of price or cost analysis
  - Type & complexity of the requirement
  - Urgency of the requirement
  - Period of performance or length of production run



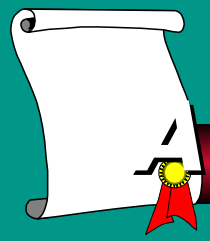
SELECTION OF CONTRACT TYPE contd.

- Contractor's technical capability & financial responsibility
- Adequacy of the contractor's accounting system
- Concurrent contracts
- Extent and nature of proposed subcontracting



SELECTION OF CONTRACT TYPE contd.

- Administrative costs to government & contractor
- Stability of design: adequacy & firmness of specifications, availability of relevant historical pricing data, contractor's prior production experience, & adequacy of contractor's estimating system
- Funding considerations

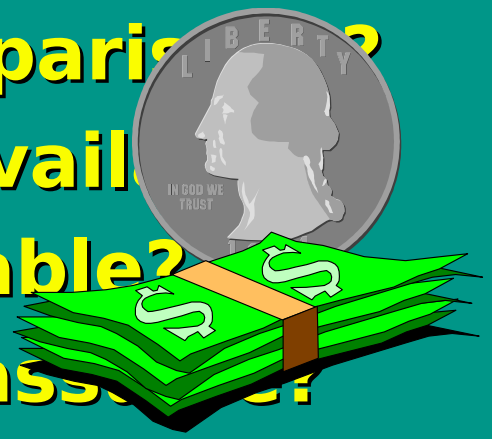


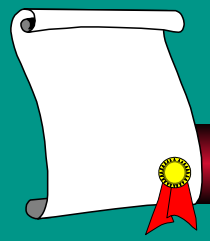
ALLOCATION OF COST RISK

- **GOVERNMENT RISK**
  - CPFF - LOE
  - T&M
  - CPFF
  - CPAF
  - CPIF
  - COST NO FEE
  - COST SHARING
  - FPAF
  - FPI
- **CONTRACTOR RISK**
  - FFP WITH EPA
  - FFP

FIRM FIXED PRICE

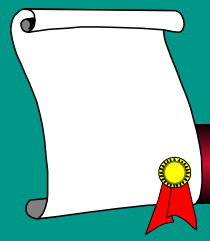
- Best utilizes profit motive
- Factors to consider
  - adequate price competition?
  - reasonable price comparis?
  - cost or pricing data avail
  - uncertainties identifiable?
  - contractor willing to ass
- Development effort





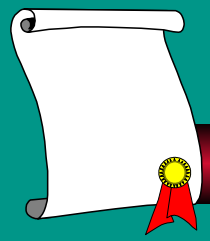
PAYMENTS

- End-item(s) accepted
  - partial deliveries
- Financing
  - progress payments
  - at a percentage of costs incurred
- Funding
  - full funding
  - incremental funding



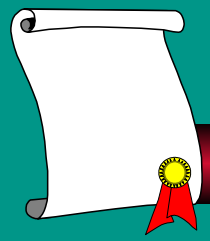
FIXED PRICE INCENTIVE (FIRM TARGET)

- Similar to cost plus incentive fee
- But has a ceiling price and no minimum or maximum fees
- Payment
  - similar to firm fixed price
  - upon contract completion, total costs
- Applied to cost incentive formula
  - billing price adjustment



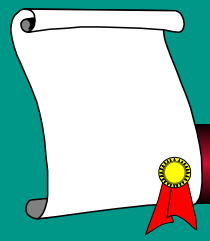
FIXED PRICE INCENTIVE (FIRM TARGET)

- Financing
  - same as fixed price
- Funding
  - If fully-funded contract
    - - potential target-to-ceiling is a contingent liability
  - if incrementally funded
    - - see limitation of Government Obligation Clause



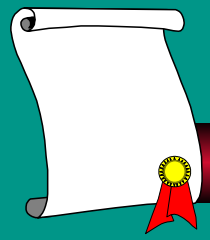
TIME AND MATERIALS
LABOR-HOUR

- Suitable for use when not possible to accurately estimate probable costs
- Payment
  - paid for hours worked
    - - loaded hourly rates
  - direct materials / cost reimbursement
  - subcontracts / also cost-reimbursement
- Financing
  - generally not an issue



TIME MATERIALS LABOR-HOUR

- Funding
  - Generally fully funded
  - permissible to incrementally fund but little gained
  - maximum liability of the Government is ceiling price



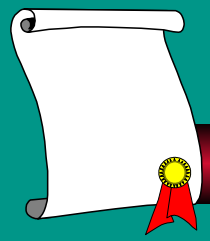
COST REIMBURSEMENT

- Best efforts
- May be used only when:

  1. Contractor's accounting system is adequate

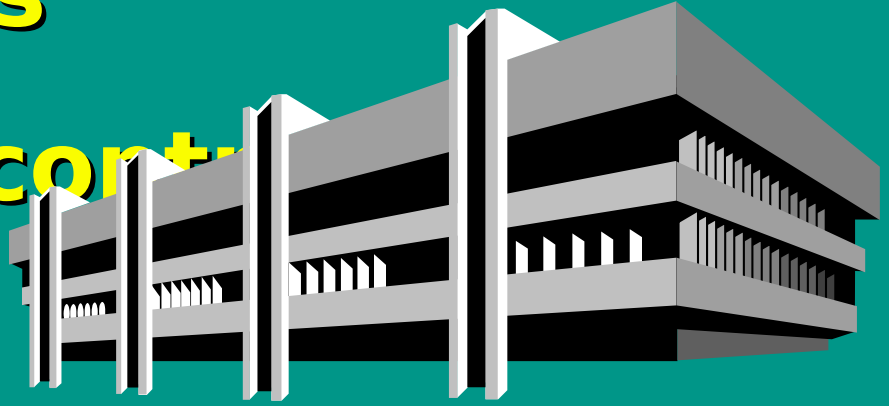
  2. Government surveillance will reasonably assure efficient methods

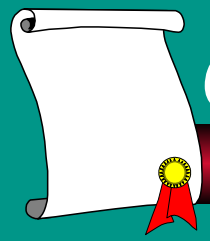
  3. Cost controls will be used



COST REIMBURSEMENT - NO FEE

- Research and development
- Especially with nonprofit institutions
- Facilities cont



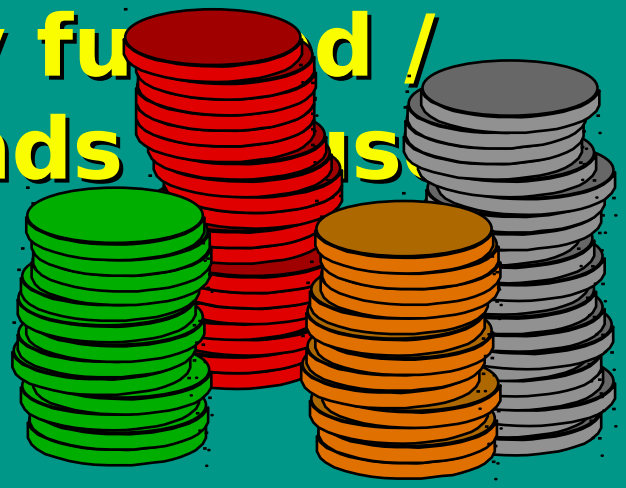


COST REIMBURSEMENTS - NO FEE

- Payments
  - allowable costs incurred
  - no fee
  - with final payment, general release executed
- Financing
  - generally, not an issue

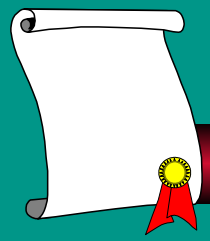
COST REIMBURSEMENTS - NO FEE

- Funding
  - fully funded / limitation of cost clause
  - incrementally fu[illegible]d / limitation of funds [illegible]s



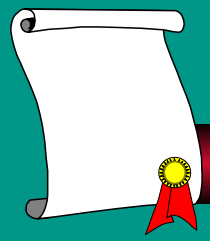
COST SHARING

- Share costs
- Payment
  - costs reimbursed at Government's share
  - no fee



COST PLUS FIXED FEE

- Similar to cost reimbursement
- Fixed fee
- Payment
  - allowable costs incurred
  - fee paid in proportion to work completed
- Funding and Financing
  - same as cost reimbursement
  - Government liability to pay fee earned



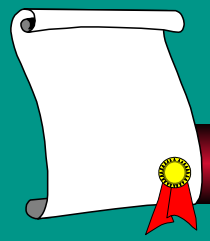
COST PLUS AWARD FEE

- Cost contract appropriate
- Desire to motivate characteristics measured on subjective basis
- Payment

  - costs incurred

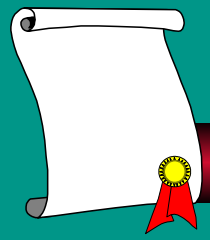
  - base fee on percentage of completion

  - awards fee based upon subjective assessment



COST PLUS AWARD FEE

- Funding and Financing
  - same manner as a CPFF contract
  - no legal liability to pay an award fee until
    notified of an award fee earned

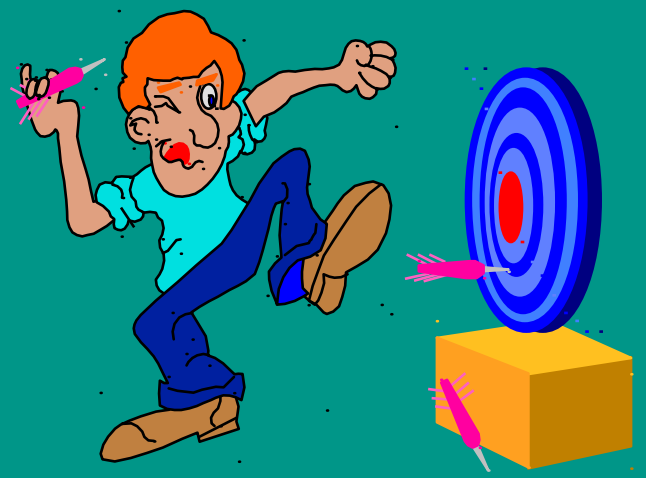


COST PLUS INCENTIVE FEE

- Some incentive to control costs
- Payment
  - allowable costs incurred
  - fee paid based upon percentage of work completed
  - final fee determined upon contract completion

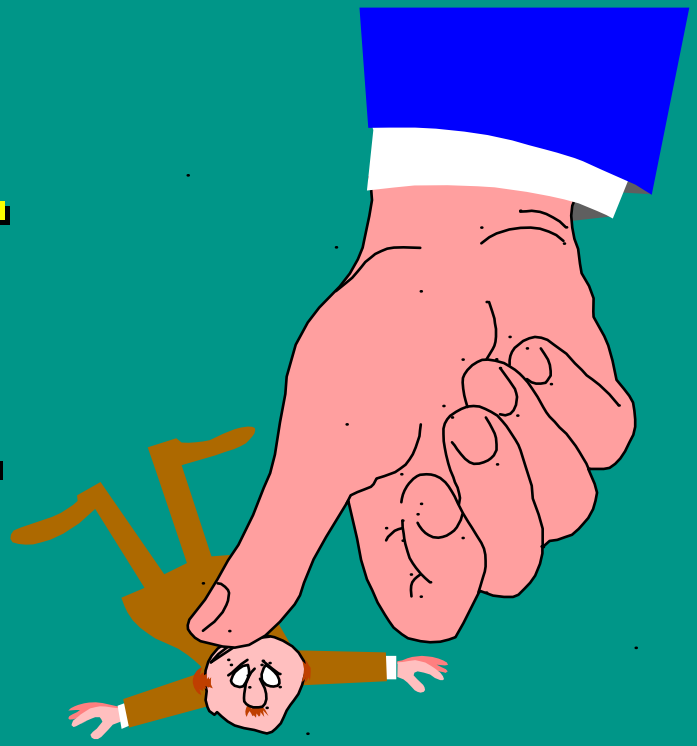
COST PLUS INCENTIVE FEE

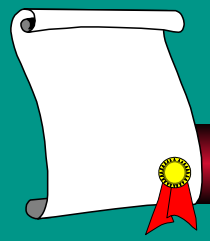
- **Funding and Financing**
  - **costs funded similar to other cost reimbursement contracts**
  - **fee amount ?**



COST PLUS PERCENTAGE OF COST

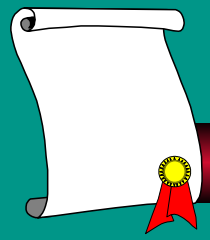
- **Prohibited**
  - **10 U.S.C. 2306(a),**
  - **41 U.S.C. 254(b)**





TASK ORDER CONTRACTING

- Federal Acquisition Streamlining Act (P.L. 103-355) authorizes multiple task order contracts
- Suitable when tasks cannot be well-defined but general statement of work can be prepared
- Basic contract(s) awarded upon full and open competition
  - preference for multiple awards



TASK ORDER CONTRACTING

- Task Orders
  - "competed"
  - formal contractual direction to perform
  - do not increase the scope, period of performance, or maximum dollar value of basic contract